

Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, TX 75242  
(214) 767-8967 x 247

Elizabeth A. Ziegler,  
for the United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<b>IN RE:</b>	§	
	§	<b>CASE NO: 08-42065-rfn-11</b>
<b>Vernon Apartments, Ltd.</b>	§	
<b>dba The Arbors,</b>	§	<b>Hearing date: May 6, 2010</b>
	§	<b>1:30 p.m.</b>
<b>Debtor-in-Possession</b>	§	

**Witness and Exhibit List on the United States Trustee's Motion to Dismiss or  
Convert under 11 U.S.C. §1112(b)(1)**

COMES NOW the United States Trustee and files this witness and exhibit list of documents pursuant to Local Bankruptcy Rule 9014.1(c) to be used in connection with his Motion to Dismiss this case or, in the alternative, to Convert this case to Chapter 7 under 11 U.S.C. §1112(b);

**LIST OF WITNESSES**

The United States Trustee may call any of the following witness at the Hearing:

1. Malcolm Fleet;
2. Susan Young;
3. Any other witness presented by the Debtor.

**LIST OF EXHIBITS**

The United States Trustee may offer into evidence any one or more of the following exhibits at the Hearing:

1. Docket sheet for case no. 08-42065-rfn-11.
2. Petition, Schedules and Statement of Financial Affairs for case no. 08-42065-rfn-11. [docket nos. 1, 22, 23]
3. Debtor's Status Report. [docket no. 37]
4. United States Trustee's Motion to Dismiss dated April 6, 2009. [docket no. 41]
5. Agreed Order Setting Deadlines [docket no. 49]
6. Monthly Operating Report for September 2009. [docket no. 69]
7. United States Trustee's Motion to Dismiss dated March 18, 2010. [docket no. 70]
8. Affidavit of Susan Young dated May 3, 2010.

The United States Trustee reserves the right to supplement or amend this Witness and Exhibit List at any time prior to the hearing. The United States Trustee also reserves the right to offer into evidence such additional testimony and documents as may be appropriate for rebuttal or impeachment purposes. Contemporaneously with serving this Witness and Exhibit list, the United States Trustee also provided a copy of the Affidavit of Susan Young. The Debtor is in possession of all other exhibits, but copies will be made available upon request.

Dated: May 3, 2010

Respectfully Submitted,  
WILLIAM T. NEARY  
UNITED STATES TRUSTEE

/s/ Elizabeth A. Ziegler  
Elizabeth A. Ziegler  
Licensed by the State Bar of New York  
Office of the United States Trustee  
1100 Commerce St. Room 976  
Dallas, Texas 75242

[elizabeth.ziegler@usdoj.gov](mailto:elizabeth.ziegler@usdoj.gov)  
(214) 767-8967 x 247

Certificate of Service

I certify that I sent copies of the foregoing document on May 3, 2010 to the following via ECF or U.S. Mail:

**Vernon Apartments, Ltd.**

Attn: Malcolm Fleet  
4436 Cumberland Road North  
Fort Worth, TX 76116

**Julie C. John**

Forshey & Prostok, LLP  
777 Main St., Suite 1290  
Ft. Worth, TX 76102

**Howard A. Borg**

801 Cherry St., Suite 1700, Unit 4  
Ft. Worth, TX 76102-6882

**Peter Michael Reed**

McCreary, Veselka, Bragg & Allen, PC  
P.O. Box 1269  
Round Rock, TX 78680

**Robert E. Black**

Law Office of Robert E. Black  
500 W. 16<sup>th</sup> Street, Suite 120  
Austin, TX 78701

/s/ Elizabeth A. Ziegler

Elizabeth A. Ziegler

**IN THE UNITED STATES BANKRUPTCY COURT  
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<b>IN RE:</b>	§	
	§	<b>CASE NO: 08-42065-rfn-11</b>
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<b>dba The Arbors,</b>	§	<b>Hearing date: May 6, 2010</b>
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<b>Debtor-in-Possession</b>	§	

**Affidavit of Susan Young Regarding Business Records**

**State of Texas  
County of Dallas**

BEFORE ME, the undersigned authority, on this day personally appeared Susan Young, known to me to be a credible person, competent in all respects to make this Affidavit, and who, being by me sworn under oath, stated:

1. My name is Susan Young. I am an Analyst in the Office of the United States Trustee, Region 6. As part of my job duties I am responsible for records regarding chapter 11 debtors' compliance with their administrative responsibilities with the Office of the United States Trustee. I am over the age of 18 years, have never been convicted of a felony, have personal knowledge of the matters stated herein, and swear and affirm that the following statements are true and correct.

2. The Office of the United States Trustee is a governmental agency. It is the normal business practice of the Office of the United States Trustee to maintain copies of chapter 11 debtors' records, including payment of quarterly United States Trustee's fees, insurance coverage, debtor-in-possession bank account opening and void check, and other defined paperwork required by the Office of the United States Trustee.

3. The Obligations of a Chapter 11 Debtor signed by Malcolm Fleet, on behalf of the Debtor, is attached hereto as **Exhibit A**. The Obligations of a Chapter 11 Debtor document is signed at every initial debtor interview, and the Office of the United States Trustee maintains a copy as a normal part of the United States Trustee's business practice. Exhibit A is a true and correct photocopy of the original Obligations of a Chapter 11 Debtor document signed by Malcolm Fleet, on behalf of the Debtor, at the initial debtor interview conducted by this office on May 19, 2008.

4. The attached Exhibit A has been kept in the ordinary course of the United States Trustee's regularly conducted business activity.

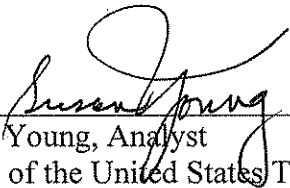
5. It is the normal business practice of the Office of the United States Trustee to maintain current records regarding submission of monthly operating reports. The Debtors have not provided a monthly operating report to the Office of the United States Trustee for the months of December 2009, January, February and March 2010.

6. It is the normal business practice of the Office of the United States Trustee to maintain current records regarding payment of quarterly United States Trustee's fees by chapter 11 debtors. According to the current records, the Debtor has paid estimated quarterly United States Trustee's fees for the first quarter of 2010, in the amount of \$650. However, as no monthly operating reports have been filed for the corresponding quarter, it is unclear if that amount may need to be adjusted.

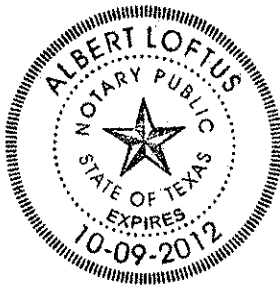
7. It is the normal business practice of the Office of the United States Trustee to maintain current records regarding maintenance of appropriate insurance. The Debtors' insurance expired, and no renewal policies have been provided to the United States Trustee.

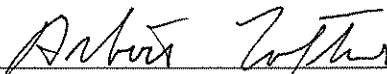
FURTHER AFFIANT SAYETH NOT.

Signed this 3<sup>rd</sup> day of May, 2010.

  
\_\_\_\_\_  
Susan Young, Analyst  
Office of the United States Trustee

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED Notary  
Public, on this the 3<sup>rd</sup> day of May, 2010, to certify which witness my hand and official  
seal.



  
\_\_\_\_\_  
Albert Loftus, Notary Public  
State of Texas



## U.S. Department of Justice

United States Trustee  
Region 6  
Northern District of Texas

United States Courthouse      214/767-8967  
Room 976  
1100 Commerce Street  
Dallas, Texas 75242      FAX: 214/767-8971

### OBLIGATIONS OF A CHAPTER 11 DEBTOR

DEBTOR: VERNON APARTMENTS, LTD. d/b/a THE ARBORS

CASE NO.: 08-42065-RFN-11

1. Both the debtor and the debtor's attorney must attend the initial creditors meeting scheduled for **June 11, 2008 at 1:30 p.m.** The debtor's attorney is responsible for the timely mailing of notice of this meeting to all creditors.
2. EFFECTIVE WITH ALL CHAPTER CASES FILED ON OR AFTER JULY 1, 2002, all individual debtors appearing for Section 341 meetings of creditors, must provide the United States Trustee with satisfactory proof of their identity and correct social security number. Permissible forms of identification include a valid state driver's license, government issued picture identification card, U.S. Passport, or legal residence alien card. Proof of a social security number may be provided through the presentation of documents such as a social security card, current W-2 form or a payroll check stub. Other forms of identification or official documents which clearly establish identity and/or provide verification of a social security number (e.g.; union card, student i.d. card) may be accepted as well.
3. Close all existing bank accounts.
4. Open a Debtor-In-Possession bank account(s) in accordance with the guidelines established by the United States Trustee. All checks must be IMPRINTED by the bank with the heading "DEBTOR-IN-POSSESSION" and the bankruptcy case number. A voided check from each account must be submitted to the U. S. Trustee for review.
5. The debtor-in-possession must provide a photocopy of the first page of all insurance policies, or a certificate of insurance covering all the assets of the estate.
6. The debtor-in-possession is to submit monthly operating reports. The first operating report for this case will be due on the **twentieth (20<sup>th</sup>) day of June, 2008** for the period covering from the date of filing through the **last day of May, 2008**. These reports are to be filed by the twentieth calendar day of each month. Operating reports are to be filed separately with the:

5/5-5/31

Exhibit A

twentieth calendar day of each month. Operating reports are to be filed separately with the:

(1) United States Trustee  
1100 Commerce Street  
Room 976  
Dallas, Texas 75242

(2) U. S. Bankruptcy Clerk  
501 Tenth Street  
Room 147  
Ft. Worth, Texas 76102

United States Bankruptcy Court: Mandatory Electronic Filing, Effective October 1, 2003:  
Pursuant to General Order 2003-04, all documents submitted to the court must be submitted electronically through the court's electronic filing system (CM/ECF).

United States Trustee's Office: Pursuant to the *Guidelines For Chapter 11 Debtors-In-Possession, Region VI, Northern District of Texas*, a hardcopy of the Monthly Operating Reports (MOR) must be filed with the United States Trustee. The hardcopy of the Monthly Operating Report (MOR) filed with the United States Trustee's Office must contain an original signature of the debtor-in-possession or an authorized representative (i.e.; corporate officer, general partner, etc.).

I understand the filing requirements of the Monthly Operating Report (MOR):

(Signature)  Debtor-In-Possession

(Signature) Julie McElwain Debtor's counsel

Additional copies of the Monthly Operating Report must be provided to the debtor's attorney and to the Chair of any Creditor's Committee appointed in the case. The debtor-in-possession is responsible for the content and accuracy of the information provided.

Other requirements relating to the operating reports include:

A. Operating reports are to be submitted only on the forms provided by the United States Trustee.

B. Operating reports are to be filed each month from the date of filing until the case is converted, dismissed or a final decree is entered and the case is closed by the Court. Operating reports will be filed monthly until confirmation of a plan and quarterly thereafter.

C. Operating reports are to be filed even if no financial activity occurred during a reporting period.

D. All forms are to be completed each month.

E. Failure to file your reports on time can prompt the filing of a motion to dismiss or convert your case.



7. Keep all post-petition taxes and payables current including the quarterly fee payment (due until case has been converted to another chapter of the Code, dismissed by the Court, or closed by Court order) to the United States Trustee.

Pursuant to 31 U.S.C. §3717, the United States Trustee Program will begin assessing interest on unpaid Chapter 11 quarterly fees charged in accordance with 28 U.S.C. §1930(a) effective October 1, 2007. Interest assessed on past due amounts will first appear on your October 2007 statement. The interest rate assessed is the rate in effect as determined by the Treasury Department at the time your account becomes past due. If payment of the full principal amount past due is received within thirty (30) days of the date of the notice of initial interest assessment, the interest assessed will be waived.

A provision of the Debt Collection Improvement Act of 1996, PL 104-134, states that in the event of non-payment of quarterly fees, the United States Trustee has the option of referring the matter to the Department of the Treasury to attempt collection. Treasury Department collection efforts will include: a) sending dunning notices to debtor, b) withholding any government payments to the debtor, including tax refunds, in the amount of the indebtedness, c) employing collection agencies to enforce collection, and d) reporting the indebtedness to credit bureaus.

8. File the Schedules and Statement of Affairs by May 20, 2008 or obtain an extension for filing prior to that date. Please note that Local Bankruptcy Rule 1007(b) requires that a conference be held with the United States Trustee before any motion for extension of time to file the Schedules and Statements of Affairs is filed with the court.

9. Become familiar with the information contained in the "Guidelines for Debtors-In-Possession" promulgated by the United States Trustee.

10. Comply with the provisions of Section 363 of the Bankruptcy Code regarding the use of cash collateral. Questions regarding this section should be directed to your attorney.

11. If a Plan of Reorganization has not been filed within 120 days after the entry of the order for relief in this case, you must file the report required by Local Bankruptcy Rule 3016(b).

DEBTOR INTERVIEW NOTES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Debtor Interview Conducted by: \_\_\_\_\_

On this day of 5/12/08, I received and reviewed a copy of this form and fully understand my obligations as a Chapter 11 debtor.

X [Signature]  
Signature of the debtor or authorized representative

Print Name MALCOLM FLEET

Relationship to the debtor: GPN. PARTNER